

CONTRACT

This Contract is made and entered into _____,
by and between the State of Indiana, acting by and through the Indiana Department of Transportation, (hereinafter referred to as "INDOT"), and

[Firm Name]

[Address]

(hereinafter referred to as the "CONSULTANT").

WITNESSETH

WHEREAS, INDOT wishes to hire CONSULTANT to provide [Services Description Summary]; and

WHEREAS, CONSULTANT has extensive experience, knowledge and expertise relating to the fields of [Services Types Involved]; and

WHEREAS, the CONSULTANT has expressed a willingness to furnish the services in connection therewith, and

NOW, THEREFORE, in consideration of the following mutual covenants, the parties hereto mutually covenant and agree as follows:

Section I Term

The term of this agreement shall be from the date of the last signature affixed to this Contract, through [Expiration Date]. A schedule of deliverables is described in Appendix "C", which is attached and incorporated by reference.

Section II Compensation

INDOT shall pay the CONSULTANT for the work performed under this Contract in accordance with Appendix "B", which is attached and incorporated by reference. The maximum amount under this agreement shall not exceed \$[Amount].

Section III Services by CONSULTANT

1. The CONSULTANT will provide the services in Appendix "A", which is attached and incorporated by reference.

Section IV General Provisions

1. Access to Records

The CONSULTANT and any SUB-CONSULTANTS shall maintain all books, documents, papers, correspondence, accounting records and other evidence pertaining to the cost incurred under this Contract, and shall make such materials available at their respective offices at all reasonable times during the period of this Contract and for five (5) years from the date of final payment under the terms of this Contract, for inspection or audit by INDOT, or their authorized representative, and copies thereof shall be furnished free of charge, if requested by INDOT. The CONSULTANT agrees that, upon request by any agency participating in federally-assisted programs with whom the CONSULTANT has contracted or seeks to Contract, INDOT may release or make available to the agency any working papers from an audit performed by INDOT of the CONSULTANT and its SUB-CONSULTANTS in connection with this Contract, including any books, documents, papers, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.

2. Assignment of Contract

The CONSULTANT binds its successors and assignees to all the terms and conditions of this contract. The CONSULTANT shall not assign or subcontract the whole or any part of this Contract without INDOT's prior written

consent, except that the CONSULTANT may assign its right to receive payments to such third parties as the CONSULTANT may desire without the prior written consent of INDOT, provided that the CONSULTANT gives written notice (including evidence of such assignment) to INDOT thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

3. Audit

At the expiration or termination of this agreement, the CONSULTANT shall deliver to INDOT all data, reports, drawings, specifications and estimates completed or partially completed. INDOT's Division of Accounting and Control shall perform the audit.

4. Authority to Bind Consultant

The CONSULTANT maintains its ability to enter into legal agreements. The signatories for the CONSULTANT represent that he/she has been duly authorized to execute contracts on behalf of the CONSULTANT designated above and has obtained all necessary or applicable approval to make this Contract fully binding upon the CONSULTANT when his/her signature is affixed and accepted by INDOT.

5. Certification for Federal-Aid Contracts Lobbying Activities

The CONSULTANT certifies, by signing and submitting this Contract, to the best of its knowledge and belief, that the CONSULTANT has complied with Section 1352, Title 31, U.S. Code, and specifically, that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal Contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal Contract, grant, loan, or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The CONSULTANT also agrees by signing this Contract that it shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

6. Change in Work

The CONSULTANT shall not commence any additional work or change the scope of the work until authorized in writing by the INDOT. CONSULTANT shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto.

7. Compliance with Laws

The CONSULTANT agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this contract shall be reviewed by INDOT and the CONSULTANT to determine whether the provisions of the contract require formal modification.

- a. The CONSULTANT and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6 et seq., the regulations promulgated thereunder, and Executive Order 05-12, dated January 12, 2005. If the

CONSULTANT is not familiar with these ethical requirements, the CONSULTANT should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<http://www.in.gov/ethics/>>>>. If the CONSULTANT or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this contract immediately upon notice to the CONSULTANT. In addition, the CONSULTANT may be subject to penalties under Indiana Code § 4-2-6-12, and under any other applicable state or federal laws.

- b. The CONSULTANT certifies by entering into this Agreement, that neither it nor its principal(s) is presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. Further, the CONSULTANT agrees that any payments in arrears and currently due to the State of Indiana may be withheld from payments due to the CONSULTANT. Additionally, further work or payments may be withheld, delayed, or denied and/or this Agreement suspended until the CONSULTANT becomes current in its payments and has submitted proof of such payment to INDOT.
- c. The CONSULTANT warrants that it has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending, and agrees that it will immediately notify INDOT of any such actions. During the term of such actions, CONSULTANT agrees that INDOT may delay, withhold, or deny work under any Supplement.
- d. If a valid dispute exists as to the CONSULTANT's liability or guilt in any action initiated by the State of Indiana or its agencies, and INDOT decides to delay, withhold, or deny work to the CONSULTANT, the CONSULTANT may request that it be allowed to continue, or receive work, without delay. The CONSULTANT must submit, in writing, a request for review to INDOT. A determination by the INDOT shall be final and binding on the parties and not subject to administrative review. Any payments that the INDOT may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.
- e. The CONSULTANT represents and warrants that the CONSULTANT if any, shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for INDOT.
- f. The CONSULTANT hereby represents and warrants that it is properly registered and owes no outstanding reports with the Indiana Secretary of State.
- g. CONSULTANT agrees that INDOT may confirm, at any time, that no liabilities exist to the State of Indiana, and, if such liabilities are discovered, that INDOT may bar CONSULTANT from contracting with INDOT in the future, cancel existing contracts, withhold payments to setoff such obligations, and withhold further payments or purchases until the entity is current in its payments on its liability to INDOT and has submitted proof of such payment to INDOT.
- h. As required by IC 5-22-3-7:
 - (1) the CONSULTANT and any principals of the CONSULTANT certify that (A) the CONSULTANT, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations] , or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the CONSULTANT will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.
 - (2) The CONSULTANT and any principals of the CONSULTANT certify that an affiliate or principal of the CONSULTANT and any agent acting on behalf of the CONSULTANT or on behalf of an affiliate or principal of the CONSULTANT: (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.
- i. All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Auditor of State. No

payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC 4-13-2-20.

j. As required by IC 5-22-3-7:

- (1) the Contractor and any principals of the Contractor certify that
 - (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of
 - (i) IC 24-4.7 [Telephone Solicitation Of Consumers],
 - (ii) IC 24-5-12 [Telephone Solicitations] , or
 - (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
 - (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.
- (2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor:
 - (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
 - (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

8. Condition of Payment

The CONSULTANT must perform all services under this Contract to INDOT's reasonable satisfaction, as determined at the discretion of INDOT and in accordance with all applicable federal, state, local laws, ordinances, rules, and regulations. INDOT will not pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of federal, state, or local law.

9. Confidentiality of State Information

The CONSULTANT understands and agrees that data, materials, and information disclosed to CONSULTANT may contain confidential and protected data. Therefore, the CONSULTANT promises and assures that data, material, and information gathered, based upon or disclosed to the CONSULTANT for the purpose of this Contract, will not be disclosed to others or discussed with third parties without INDOT's prior written consent.

10. Conflict of Interest

- a. As used in this section:
 - "Immediate family" means the spouse and the unemancipated children of an individual.
 - "Interested party," means:
 1. The individual executing the Contract;
 2. An individual who has an interest of three percent (3%) or more of CONSULTANT, if CONSULTANT is not an individual; or
 3. Any member of the immediate family of an individual specified under subdivision 1 or 2.
 - "Commission" means the state Ethics Commission.
- b. INDOT may cancel this Contract without recourse by CONSULTANT if any interested party is an employee of the State of Indiana.
- c. INDOT will not exercise its right of cancellation under section 10b above if the CONSULTANT gives INDOT an opinion by the Commission indicating that the existence of this Contract and the employment by the State of Indiana of the interested party does not violate any statute or code relating to ethical conduct of state employees. INDOT may take action, including cancellation of this Contract consistent with an opinion of the Commission obtained under this section.

- d. CONSULTANT has an affirmative obligation under this Contract to disclose to INDOT when an interested party is or becomes an employee of INDOT. The obligation under this section extends only to those facts that CONSULTANT knows or reasonably could know.

11. Debarment and Suspension

The CONSULTANT certifies, by entering into this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the CONSULTANT. The CONSULTANT shall notify INDOT upon any change in the status of the structure of the CONSULTANT.

12. Disadvantaged Business Enterprise Program

Notice is hereby given to the CONSULTANT or SUB-CONSULTANT that failure to carry out the requirements set forth in 49 CFR Sec. 26.13(b) shall constitute a breach of this Contract and, after notification, may result in termination of this Contract or such remedy as INDOT deems appropriate.

The referenced section requires the following policy and disadvantaged business enterprise ("DBE") assurance to be included in all subsequent contracts between the CONSULTANT and any SUB-CONSULTANT:

The CONSULTANT, sub recipient or SUB-CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as INDOT, as the recipient, deems appropriate.

As part of the CONSULTANT's equal opportunity affirmative action program, it is required that the CONSULTANT shall take positive affirmative actions and put forth good faith efforts to solicit proposals or bids from and to utilize disadvantaged business enterprise SUB-CONSULTANTS, vendors or suppliers.

13. Minority and Women Business Enterprise Compliance

The CONSULTANT agrees to comply fully with the provisions of the CONSULTANT's MBE/WBE participation plan, if any.

14. Insurance

The CONSULTANT shall be responsible for the accuracy of the services and shall promptly make necessary revisions or corrections resulting from its negligence, errors or omissions without any additional compensation from INDOT. Acceptance of the services by INDOT shall not relieve the CONSULTANT of responsibility for subsequent correction of its negligent act, error or omission or for clarification of ambiguities.

During construction or any phase of work performed by others based on services provided by the CONSULTANT, the CONSULTANT shall confer with INDOT when necessary for the purpose of interpreting the information, and/or to correct any negligent act, error or omission. The CONSULTANT shall prepare any plans or data needed to correct the negligent act, error or omission without additional compensation, even though final payment may have been received by the CONSULTANT. The CONSULTANT shall give immediate attention to these changes so there will be a minimum of delay to the project.

In the event of any negligent act, error or omission which INDOT determines to be the responsibility of the CONSULTANT in any phase of the services, the correction, repair or reconstruction of which may require additional field or office work, the CONSULTANT shall be promptly notified and shall be required to perform such corrective services as may be necessary without undue delay and without additional costs to INDOT.

The CONSULTANT shall be responsible for damages including but not limited to direct and indirect damages incurred as a result of its negligent act, error or omission, and for losses or costs to repair or remedy construction. Acceptance of the services by INDOT shall not relieve the consultant of responsibility for subsequent correction.

The CONSULTANT shall be required to maintain in full force and effect, from the date of the first authorization to proceed until INDOT's acceptance of the work product, at least the following minimum coverage. The CONSULTANT must obtain insurance written by insurance companies authorized to transact business in the State of Indiana and licensed by the Department of Insurance as either admitted or non-admitted insurers.

The State of Indiana, INDOT, its officers and employees assume no responsibility for the adequacy of limits and coverage in the event of any claims against the CONSULTANT, its officers, employees, subconsultants or any agent of any of them, and the obligations of the indemnification in Section 19 below shall survive the exhaustion of limits of coverage and discontinuance of coverage beyond the term specified, to the fullest extent of the law.

The CONSULTANT shall furnish a certificate of insurance and all endorsements to INDOT prior to the commencement of this Contract. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the CONSULTANT. Failure to provide insurance as required in this Contract is a material breach of contract entitling INDOT to immediately terminate this Contract.

A. Professional Liability Insurance

The CONSULTANT must obtain and carry professional liability insurance, either a practice policy or project policy.

1. Practice Policy Professional Liability Insurance

The CONSULTANT shall carry professional liability insurance in an amount not less than \$1,000,000 per claim and \$1,000,000 aggregate for all claims for negligent performance. The CONSULTANT shall maintain the coverage for a period ending two years after substantial completion of construction.

2. Project Professional Liability Insurance Policy

At INDOT's request, the CONSULTANT shall obtain a separate professional liability project insurance policy to insure against negligent performance on a specific project. The CONSULTANT shall obtain a policy that also includes coverage for asbestos exposures, pollution liability and contractors pollution liability. The project policy shall cover the design and construction period and a discovery period of not less than two years. The discovery period shall be measured from substantial completion of construction. The project must be endorsed to the consultant's practice policy upon expiration of the discovery period. The project policy shall carry minimum limits per claim and project aggregate and a deductible amount as required by the scope of services. All design professionals and all subconsultants providing services, including environmental and geotechnical services, shall be included in the policy as named insureds.

B. Workers Compensation and Employees Liability

The CONSULTANT shall obtain worker's compensation insurance in compliance with Indiana's laws.

C. Commercial General Liability Insurance

The CONSULTANT shall obtain commercial general liability insurance in an amount not less than \$1,000,000 per occurrence, \$3,000,000 general aggregate. Coverage shall be on an occurrence form, and include contractual liability. The policy shall be amended to include the following extensions of coverage:

1. Exclusions relating to the use of explosives, collapse, and underground damage to property shall be removed.
2. The policy shall provide thirty (30) days notice of cancellation to INDOT.
3. CONSULTANT shall name INDOT as an additional insured.

D. Automobile Liability

The CONSULTANT shall obtain automobile liability insurance covering all owned, leased, borrowed, rented, or non-owned autos used by employees or others on behalf of the CONSULTANT for the conduct of the CONSULTANT's business, for an amount not less than \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage. The term "automobile" shall include private passenger autos, trucks, and similar type vehicles licensed for use on public highways. The policy shall be amended to include the following extensions of coverage:

1. Contractual Liability coverage shall be included to cover the assumed liability of the indemnity recited section 19.
2. The policy shall provide thirty (30) days notice of cancellation to INDOT.
3. CONSULTANT shall name INDOT as an additional insured.

E. Watercraft Liability

1. When necessary to use watercraft for the performance of the CONSULTANT's services under the terms of this contract, either by the CONSULTANT, or any subconsultant, the CONSULTANT shall carry watercraft liability in the amount of \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage, including Protection & Indemnity where applicable. Coverage shall apply to owned, non-owned, and hired watercraft.
2. If the maritime laws apply to any work to be performed by the CONSULTANT under the terms of the agreement, the following coverage shall be provided:
 - a. United States Longshoremen & Harborworkers
 - b. Maritime Coverage - Jones Act
3. The policy shall provide thirty (30) days notice of cancellation to INDOT.
4. CONSULTANT shall name INDOT as an additional insured.

F. Aircraft Liability

1. When necessary to use aircraft for the performance of the CONSULTANT's services under the terms of this contract, either by the CONSULTANT or subconsultant, the CONSULTANT shall carry aircraft liability in the amount of \$5,000,000 Combined Single Limit for Bodily Injury and Property Damage, including Passenger Liability. Coverage shall apply to owned, non-owned and hired aircraft.
2. The policy shall provide thirty (30) days notice of cancellation to INDOT.
3. CONSULTANT shall name INDOT as an additional insured.

G. Valuable Papers and Records Insurance only as may be specifically required in the agreement.

H. Umbrella Liability

Coverage in excess of the underlying liability policies in an amount not less than \$1,000,000 Combined Single Limit shall be written on an occurrence form, and the following extensions of coverage included:

1. A thirty (30) day notice of cancellation to INDOT.
2. Following form of primary general and automobile liability coverage.
 - a. CONSULTANT shall name INDOT as an additional insured.

- b. Products and completed Operations (coverage to be included).
- c. Explosion, Collapse and Underground (exclusions removed).
- d. Contractual Liability (coverage to be included).
- e. Watercraft Liability (coverage to be included).
- f. Aircraft Liability (a \$6,000,000 Aircraft Liability Policy is an acceptable alternative if the Consultant's Umbrella Insurer will not provide following form aircraft coverage).

15. Delays and Extensions

The CONSULTANT agrees that no charges or claim for damages shall be made by it for any minor delays from any cause whatsoever during the progress of any portion of the services specified in this Contract. Such delays, if any, shall be compensated for by an extension of time for such period as may be determined by INDOT subject to the CONSULTANT's approval, it being understood, however, that the permitting of the CONSULTANT to proceed to complete any services, or any part of them after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of INDOT of any of its rights herein. In the event substantial delays or extensions, or change of any kind, not caused by CONSULTANT, takes place which causes CONSULTANT material change in scope, character or complexity of work, including but not limited to the cost of demobilization /mobilization of resources, INDOT at its sole discretion shall determine any adjustments in compensation. Consultant must notify INDOT in writing immediately of material change in the work.

16. Drug-Free Workplace Certification

The CONSULTANT hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace, and that it will give written notice to the Indiana Department of Transportation and the Indiana Department of Administration within ten (10) days after receiving actual notice that an employee of the CONSULTANT has been convicted of a criminal drug violation occurring in the CONSULTANT's workplace.

False certification or violation of the certification may result in sanctions including, but not limited to, suspension of Contract payments, termination of the Contract and/or debarment of contracting opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total Contract amount set forth in this Contract is in excess of \$25,000.00, CONSULTANT hereby further agrees that this Contract is expressly subject to the terms, conditions and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts with and grants from the State of Indiana in excess of \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the CONSULTANT and made a part of the contract or agreement as part of the contract documents.

The CONSULTANT certifies and agrees that it will provide a drug-free workplace by:

- a. Publishing and providing to all of its employees a statement notifying their employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the CONSULTANT's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and
- b. Establishing a drug-free awareness program to inform their employees of (1) the dangers of drug abuse in the workplace; (2) the CONSULTANT's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace.

- c. Notifying all employees in the statement required by subparagraph (a) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify the CONSULTANT of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- d. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (c)(2) above, or otherwise receiving actual notice of such conviction;
- e. Within thirty (30) days after receiving notice under subdivision (c)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; and
- f. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (a) through (e) above.

17. Employment

During the period of this Contract, the CONSULTANT shall not engage, on a full or part time or other basis, any INDOT personnel who remain in the employ of INDOT.

18. Force Majeure

In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (Hereinafter referred to as a Force Majeure Event), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

19. Funding Cancellation Clause

When the State Budget Agency of Indiana makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of a Contract, the Contract shall be canceled. A determination by either Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

20. Indemnification

The CONSULTANT agrees to indemnify, and hold harmless the State of Indiana, its agents, officials, and employees from claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the CONSULTANT if any under this Contract. INDOT shall not provide such indemnification to the CONSULTANT.

21. Independent Contractor

Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or of the other party. The CONSULTANT shall be responsible for providing all necessary unemployment and workers' compensation insurance for the CONSULTANT's employees.

22. Key Person(s)

- a. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this

Contract for whatever reason, INDOT shall have the right to terminate this Contract upon thirty (30) days prior written notice.

- b. In the event that the CONSULTANT is an individual, that individual shall be considered a key person and, as such, essential to this Contract. Substitution of another for the CONSULTANT shall not be permitted without INDOT's express written consent.
- c. Nothing in sections 22a and 22b, shall be construed to prevent the CONSULTANT from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person. Examples of such ancillary tasks include secretarial, clerical, and common labor duties. The CONSULTANT shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

Key person to this Contract is _____.

23. Licensing Standards

The CONSULTANT and its employees shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the CONSULTANT pursuant to this Contract. INDOT will not pay the CONSULTANT for any services performed when the CONSULTANT, the businesses that comprise the CONSULTANT, employees are not in compliance with such applicable standards, laws, rules or regulations. If licensure, certification or accreditation expires or is revoked, the CONSULTANT shall notify INDOT immediately and INDOT, at its option, may immediately terminate this Contract.

24. Non-Discrimination

- a. Pursuant to I.C. 22-9-1-10 and the Civil Rights Act of 1964, the CONSULTANT, shall not discriminate against any employee or applicant for employment, to be employed in the performance of work under this Contract, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin, ancestry or status as a veteran. Breach of this covenant may be regarded as a material breach of this Contract. Acceptance of this Contract also signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.
- b. The CONSULTANT understands that INDOT is a recipient of federal funds. Pursuant to that understanding, the CONSULTANT, agree that if the CONSULTANT employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the CONSULTANT will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The CONSULTANT shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of Contract.

25. Ownership of Documents

All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the CONSULTANT prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the CONSULTANT transfers any ownership claim to INDOT and all such materials will be the property of INDOT. Use of these materials, other than related to contract performance by the CONSULTANT, without INDOT's prior written consent, is prohibited. During the performance of this Contract, the CONSULTANT shall be responsible for any loss of or damage to these materials developed for or supplied by INDOT and used to develop or assist in the services provided herein while the materials are in the possession of the CONSULTANT. Any loss or damage thereto shall be restored at the CONSULTANT's expense. The CONSULTANT shall provide INDOT full, immediate, and unrestricted access to the work product during the term of this Contract.

26. Penalties, Interest and Attorney's Fees

INDOT will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law.

27. Pollution Control Requirements

If this Contract is for \$100,000 or more, the CONSULTANT:

- a. stipulates that any facility to be utilized in performance under or to benefit from this Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;
- b. agrees to comply with all of the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder; and
- c. stipulates that, as a condition of federal-aid pursuant to this Contract, it shall notify INDOT and Federal Highway Administration of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this Contract is under consideration to be listed on the EPA Listing of Violating Facilities.

28. Waiver

- a. Neither INDOT's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the CONSULTANT shall be and remain liable to INDOT in accordance with applicable law for all damages to INDOT caused by the CONSULTANT's negligent performance of any of the services furnished under this Contract.
- c. INDOT's rights and remedies provided for under this Contract are in addition to any other rights and remedies provided by law.

29. Severability

The invalidity of any section, subsection, clause or provision of the Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of the Contract.

30. Status of Claims

The CONSULTANT shall be responsible for keeping INDOT currently advised as to the status of any claims made for damages against the CONSULTANT resulting from services performed under this Contract. The CONSULTANT shall send notice of claims related to work under this Contract to:

Chief Counsel
Indiana Department of Transportation
100 North Senate Avenue, Room N758
Indianapolis, IN 46204-2249

31. Substantial Performance

This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.

32. Successors and Assigns

The CONSULTANT binds its successors, executors, administrators and assigns to all covenants of this Contract. Except as above set forth, the CONSULTANT shall not assign, sublet or transfer its interest in this Contract without the prior written consent of INDOT.

33. Supplements

This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

34. Taxes

INDOT is exempt from state, federal, and local taxes. INDOT will not be responsible for any taxes levied on the CONSULTANT as a result of this Contract.

35. Termination for Convenience

- a. INDOT may terminate, in whole or in part, whenever, for any reason, when INDOT determines that such termination is in its best interest. Termination or partial termination of services shall be effected by delivery to the CONSULTANT of a Termination Notice at least fifteen (15) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The CONSULTANT shall be compensated for services properly rendered prior to the effective date of termination. INDOT will not be liable for services performed after the effective date of termination.
- b. If INDOT terminates or partially terminates this contract under section 35a, then and in such event, all data, reports, drawings, plans, sketches, sections and models, all specifications, estimates, measurements and data pertaining to the project, prepared under the terms or in fulfillment of this Contract, shall be delivered within ten (10) days to INDOT. In the event of the failure by the CONSULTANT to make such delivery upon demand, then and in that event the CONSULTANT shall pay to INDOT any damage it may sustain by reason thereof.

36. Travel

The CONSULTANT's expenditures for travel will be reimbursed by INDOT at the current rate paid by the State of Indiana. Travel expenses can only be reimbursed in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular.

37. Waiver of Rights

No right conferred on either party under this Contract shall be deemed waived and no breach of this Contract excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right.

38. Work Standards

The CONSULTANT shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the INDOT becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, INDOT may request in writing the replacement of any or all such individuals, and CONSULTANT shall grant such request.

39. Non-Collusion

The undersigned attests, subject to the penalties for perjury, that he/she is the contract party, or that he/she is the representative, agent, member or officer of the CONSULTANT that he/she has not, nor has any other member, employee, representative, agent or officer of the firm, company, corporation or partnership represented by him/her, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of the Contract.

In Witness Where of, CONSULTANT and INDOT have, through duly authorized representatives, entered into this Agreement. The parties having read and understand the foregoing terms of the Contract do by their respective signatures dated below hereby agree to the terms thereof.

In testimony whereof, the parties hereto have executed this Contract.

CONSULTANT

STATE OF INDIANA
Indiana Department of Transportation
Recommended for approval by:

Title:_____

Thomas O. Sharp
Commissioner

Date: _____

Date: _____

Attest:

Secretary

Date: _____

Approved:

Approved as to Form and Legality:

Charles E. Schalliol, Director
State Budget Agency

_____(For)
Steve Carter
Indiana Attorney General

Date:_____

Date: _____

Approved:

Earl Goode, Commissioner
Department of Administration

Date:_____

Prepared by: _____

District/Division/Section:_____